

Title of report: Brookfield School - PreConstruction Cost

Decision maker: Director of Resources and Assurance

Decision date: Monday 14th Nov 2022

Report by: Project Manager

Classification

Open

This report is exempt by virtue of the paragraph(s) of the Access to Information Procedure Rules set out in the constitution pursuant to Schedule 12A of the Local Government Act 1972, as amended.

Decision type

Non-key

Wards affected

(All Wards);

Purpose

To approve spend of up to £370,000 pre-construction cost to enable the surrender of a lease to acquire possession of land required to redevelop Brookfield School, start the gas diversion process prior to school redevelopment and re-engage with existing consultants to tender project.

Recommendation(s)

That:

- a) spend of up to £370,000 from the Capital Development budget be approved to start the pre-construction tasks needed to commence the Brookfield Special School capital improvement programme.**
- b) The Corporate Director, Children and Young People services is authorised, to take all operational decisions relating to the above recommendations including contracts ,and**

- c) **Authority be delegated to the Director of Strategic Assets Delivery to finalise and complete all necessary deeds of surrender and leases with both the Brookfield School and the Greyhound Rugby Football Club**

Alternative options

Do not agree the spend on pre-construction costs. This is not recommended, this would cause significant delay to the commencement of the Brookfield Special School capital improvement programme, by at least 7 months, which is likely to increase the cost of the project and could put at risk the 70% funding offer, for the project, from the Department of Education (DfE).

Council agreed to amend capital program to reflect current funding arrangements at its meeting July meeting.

[Link to report](#)

Key considerations

1. The Brookfield Special School is an academy situated in Hereford on two sites – the main site being close to the racecourse and the second located across the City in a mobile classroom close to the inner ring road (approximately 20 minutes apart by car). It has both primary and secondary phases. It is Herefordshire's only **social, emotional & mental health (SEMH)** special school.
2. The premises are inadequate – A small group of the most vulnerable and challenging pupils are currently accommodated offsite in a temporary demountable building of poor quality and unsuitable layout on Symonds Street. The use of this building is subject to a temporary planning permission which requires the mobile building to be removed by 16 April 2023. There are no female pupil toilets in the secondary building and as there is now demand for female places at the school (although this has not been the case previously), this poses an equality issue. All current classrooms are small and there are only 9 as opposed to the 10 classrooms described as necessary in BB104 (**Establishes non-statutory area guidelines for buildings and grounds at special schools and alternative provision**). There are no indoor sports facilities despite physical education being a statutory requirement of the national curriculum.
3. This decision paper supports the Cabinet decision, on 21 July 2022, to accept of the Department for Education (DfE) funding offer and move forward with The Brookfield Special School project. There are a number of requirements to allow the progression of this decision in a timely manner.
4. The three required tasks needed to start the project are:
 - a) Negotiate and agree the surrender of the current lease with the Greyhound Rugby Club (GRC) and take forward a new lease.
 - b) Commission a contractor to divert an existing gas pipe that currently runs through the proposed construction site. (subject to approval of the GRC, legally documented by a licence and works agreement.)
 - c) To re-engage consultants to review and update the existing tender documents and design Stage 4 and carry out procurement for design and build.
5. The transfer of the Brookfield Special School to the Mercian Education Trust (MET) cannot take place until land is acquired from the GRC. Intrinsic to that is the funding offer from the DfE, for the works at Brookfield school, which is conditional on the Brookfield school transferring to the MET.

6. To progress the transfer, upfront funding needs to be available to ensure meaningful negotiations can proceed in order to acquire possession of the land needed for the redevelopment of Brookfield school and transfer of pupils from the Symonds Street Site.. Without this land the project cannot proceed. The consideration offered by the council in these negotiations will likely include capital works that will help secure the long term future of the GRC.
7. A gas pipe lies beneath an area of the site to be developed. The gas distributor, Cadent are the only contractor who can be commissioned to do this piece of work. They have informed the council they have a 20 week lead in time for these type of works.
8. Given this lead in time and with inflation at its highest in over 40 years, the cost of the overall project could increase significantly if these works are delayed. It is therefore proposed that this is commissioned in advance of the surrender of the lease and transfer of the Brookfield school.
9. The gas pipe works will require consent of the Greyhound Rugby Club by way of a License for Access and works in the interim.
10. We also need to re-engage the consultants who prepared the original tender documents, to review and update the documents ready for re-tender. At the outset of the project, design and cost consultants were appointed as part of the delivery team. During the ongoing negotiations with the DfE regarding funding, the consultant's contracts were temporarily paused and now require to be re-engaged. This will allow for a prompt tendering process which can be done in parallel to the gas works, again saving time and addition cost.
11. It is intended that once the transfer of the Brookfield Special School to the MET, the funding provided from Capital Development budget will be reimbursed from the funding allocated to the Brookfield Special School capital improvement budget.

Community impact

12. The County Plan outlines the council's priorities. The improvement to Brookfield school supports three of these: Ensure all children are healthy, safe and inspired to achieve, Protect and improve the lives of vulnerable people, and Invest in education and the skills needed by employers. The children and young people's directorate [schools capital investment strategy](#) itemises 11 principles. The Brookfield improvement project would align with principles 1, 2, 7, 8, 10 and 11.
13. The council will be increasingly responsible for taking steps towards protecting the environment and will expect all schools to work towards achieving and displaying energy certificate rating of C or above and a silver eco schools rating along with reducing energy consumption located near community assets
14. As with all school provision, improvements to the quality of education is vitally important in improving the life chances of children and young people in the care system. The improvements to Brookfield school will improve the quality of education, and the educational experiences for all of the pupils on roll, including those who are in care and therefore are the responsibility of the corporate parenting board.

Environmental Impact

15. The council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.
16. The environmental impact of this proposal has been considered through the design of the improvement works and includes appropriate requirements on the contractor/delivery partner to minimise waste, reduce energy and carbon emissions and to consider opportunities to enhance biodiversity. This will be managed and reported through the ongoing contract management.
17. The new proposal for the Arrow Centre and the Sports Hall buildings on the Brookfield School site refer to the current Local Plan - Core Strategy adopted in October 2015 and the proposals aim to exceed the minimum UK Building Regulations Standards and to reduce the carbon emissions associated with the operation of the buildings. An energy strategy has been prepared to address the council's Local Plan and exceeds its requirements to comply with the Part L2A of the current UK Building Regulations (2013).

Equality duty

Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
18. The decision to invest in capital improvements to Brookfield advances equality of opportunity by; giving the school the ability to offer placements for girls with SEMH needs and, by improving the quality of accommodation supporting the fostering of good relations between children and young people who have a designated special need of SEMH at the school, and those in mainstream settings

Resource implications

19. By taking the decision to proceed with implementation of the project, the project will follow the council's Programme Management Office process. All work will be commissioned in line with the council's contract procedure rules. Any ongoing revenue implications of this project will be the responsibility of the school and no impact on the councils revenue budget.
20. The capital costs of the decision are set out below. These works are to enable the project to deliver the next phase once the funding with DfE has been signed off and transfer has been agreed, to ensure there is no significant delay due to the time it will take to do these enabling works. Therefore at the point the decision is taken to deliver the full project build these costs will be transferred to the Brookfield project line in the capital programme and detailed in that decision report the overall funding of the £5m project when taken.

Capital cost of project.	2022/23	Future Years	Total		
	£000	£000	£000	£000	£000
<i>Land negotiation Costs</i>	150			150	
<i>Design & Cost Consultants</i>	67			67	
<i>Other Professional & Internal Fees</i>	30			30	
Gas Diversion	100			100	
Contract Contingency	23			23	
TOTAL	370			370	

Funding streams	2022/23	Future Years	Total		
	£000	£000	£000	£000	£000
Capital Development budget	370	0		370	
TOTAL	370			370	

Legal implications

21. The council has power to under the development proposals in its capacity as freehold owner of the Brookfield School site, subject to the requirements of the Secretary of State arising from the academy status of Brookfield school. Furthermore Section 1 of the Localism Act 2011 provides a general power of competence for local authorities. It gives local authorities the same power that an individual generally has, to act (subject to its fiduciary and statutory duties).
22. The council is under a duty to ensure that primary and secondary education facilities for the area include adequate provision for recreation and social and physical training for children. (s507A and B Education Act 1996). Academies are required to follow a broad and balanced curriculum that promotes the physical development of pupils. While the Act does not state that facilities for physical education to be provided on site, the provision of indoor sports facilities would assist the school to meet the needs of its pupils in delivering the curriculum
23. The council is empowered to deal with the Brookfield lease and grant a fresh lease to Brookfield, by a variety of statutes. Section 123 (1) Local Government Act 1972 provides that a principal council may dispose of land held by them in any manner they wish provided that it is not for a consideration less than the best that can reasonably be obtained, unless with

Secretary of State's consent. The grant of a lease constitutes a disposal of land. Dealings with land specifically in relation to schools are governed by the Academies Act 2010 and the School Standards and Framework Act 1998.

24. Whilst the freehold to the site is owned by the council, there are existing lease provisions creating shared use of some spaces with other council tenants. Furthermore, part of the proposed development sits on land which is currently let to another council tenant and the council cannot compel the tenant to surrender this land to the council or to alter the provisions regarding shared spaces.
25. The council's legal team will deal with the preparation and completion of the necessary legal documentation required to deliver these initial development stages including the contract with Cadent, the surrender and grant of the lease and the tender documents for the design and build of the development.
26. The design and build contract for the improvement works is in excess of the UK's procurement threshold for tendering therefore all procurement processes for the delivery of the project will be compliant with not only the council's contract procedure rules but also the Public Contract Regulations 2015.
27. Once all third party negotiations are concluded, it is the intention of the council to grant a 125 year lease to the Mercian Educational Trust, for a peppercorn rent. The DfE model lease will be used which includes clauses preventing the academy trust from disposing of its leasehold interest in the public land without the prior consent of the Secretary of State for Education. This will also be included within the Academy's funding agreement.

Risk management

28. The risks presented by the project commencement are identified below, along with consequences of the risk factor occurring, and mitigations proposed to resolve the issues.
- 29.

Risk / opportunity	Mitigation
<p>The Greyhound Rugby club may choose not to surrender lease. This would mean the council do not have, in their possession, land required to deliver the Brookfield Special School capital improvement programme</p>	<p>The council have been consulting with the Greyhound Rugby Club for a number of months and as a result a realistic offer to acquire the land is believed to be achievable.</p>
<p>The Mercian Education Trust could pull out of the transfer of the Brookfield Special School if the capital project is at risk/does not go ahead.</p>	<p>Funding has been secured for the project - formal decisions have been made by both the Department for Education (DfE) and the Council to fund the project contributing 70% and 30% respectively, subject to the transfer. In addition, the council are in positive negotiations with the Greyhound Rugby Club in the surrender of their lease in order for the council to acquire possession of the land required to deliver the project.</p>
<p>By progressing with any of the pre-construction items recommended, ahead of either securing possession of the land and/or the transfer of Brookfield School to MET taking place, and either of the risks above were to be realised, any spend by the council would be abortive and would not be recoverable from the Brookfield Special School capital improvement programme capital line.</p>	<p>The mitigation in the risks above are intrinsic and therefore apply here.</p>

Consultees

None link to previous report above.

Appendices

None.

Background papers

Printed decision Brookfield Special School Capital Improvement Programme re-profile of spend.pdf (herefordshire.gov.uk)

Report Reviewers Used for appraising this report:

Governance	John Coleman	Date 19/10/2022
Finance	Karen Morris	Date 26/10/2022
Legal	Alice McAlpine	Date 25/10/2022
Communications	Luenne Featherstone	Date 25/10/2022
Equality Duty	Harriet Yellin	Date 25/10/2022
Procurement	Lee Robertson	Date 18/10/2022
Risk	Kevin Lloyd	Date 19/10/2022
Approved by	Andrew Lovegrove	Date 03/11/2022

Please include a glossary of terms, abbreviations and acronyms used in this report.